

National Freedom of Information Act Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

[Also submitted via email at hq.foia@epa.gov]

July 16, 2014

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I respectfully request the below records, between March 1, 2013 and July 31, 2013, regarding the confirmation of Gina McCarthy to the position of EPA Administrator and the EPA investigation into groundwater contamination in Pavillion, Wyoming.

I hereby request any and all records:

- a) of communication between EPA officials and oil and gas industry officials and/or representatives, occurring between March 1, 2013 and July 31, 2013 regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY.
- b) of communication between EPA officials and members of Congress and/or their staff, occurring between March 1, 2013 and July 31, 2013 regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY.
- c) of communication between EPA officials and Heather Zichal, occurring between March 1, 2013 and July 31, 2013 regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY.
- d) of internal EPA communications, occurring between March 1, 2013 and July 31, 2013 regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY.

I am requesting these records as a representative of Food & Water Watch, a non-profit consumer advocacy organization, and request a fee waiver on the following basis:

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor: The above request specifically identifies the confirmation of Administrator Gina McCarthy and the EPA investigation in Pavillion, WY. As such, the request specifically concerns identifiable operations or activities of the government.

2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request: The requested records will provide insight into the confirmation process and whether it had any bearing on EPA's decision to end their investigation of groundwater contamination in Pavillion, WY. To Pavillion, WY residents, in particular, the requested information will be "meaningfully" informative.
3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough: F&WW staff has the ability to analyze the information requested and intends to disseminate its analysis broadly to provide for public understanding of the confirmation process and any influence on the decision to end the Pavillion investigation. Disclosure of records suggesting that EPA withdrew from its investigation due to outside pressure would contribute to public understanding of the agency's operations as well as the operations of Congress and the White House throughout cabinet confirmations. F&WW will disseminate the results of its independent analysis through its established communication channels, including on-line content, fact sheets, issue briefs and reports, all of which are made freely available to the public. A number of courts have found that requesters' statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public is sufficient to entitle an organization to a fee waiver.¹
4. The disclosure must contribute "significantly" to public understanding of government operations or activities: EPA's draft report on the investigation found that "the data indicates likely impact to ground water that can be explained by hydraulic fracturing."² When EPA handed the investigation to the State of Wyoming, the agency's press release said, "EPA stands behind its work and data."³ The *Wall Street Journal* reported in 2013 that over 15 million Americans live within a mile of a well drilled since 2000.⁴ Because the practice of fracking has expanded so rapidly, the risk of water contamination is significant to residents across the country. For this reason, evidence of undue influence on EPA's decision to hand the investigation to Wyoming would contribute significantly to public understanding of the cabinet confirmation process and the operations of EPA. Regardless of whether any undue influence was actually exercised, disclosure of communications that either confirm or deny suspected influence is significant to the residents of Pavillion, WY, the millions of residents living near fracked oil and gas wells, and the public at large that is interested in either the administrator confirmation process or the possibility that

¹See *S. Utah Wilderness Alliance v. U.S. BLM*, 402 F. Supp. 2d 82, 88 (D.D.C. 2005) (quoting *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) ("courts' findings that organizations' 'statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations . . . [are] sufficient to entitle [the] organization to a fee waiver.'")). See also *Judicial Watch, Inc., v. Rossotti*, 326 F.3d at 1314.

² United States Environmental Protection Agency. "Investigation of Ground Water Contamination near Pavillion, Wyoming." Draft. (EPA 600/R-00/000). December 2011 at xiii.

³ EPA. [Press release]. "Wyoming to lead further investigation of water quality concerns outside of Pavillion with support of EPA." June 20, 2013

⁴ Gold, Russell and Tom McGinty. "Energy boom puts wells in America's backyard." *Wall Street Journal*. October 25, 2013.

EPA's original conclusion was correct. Residents of Pavillion, as well as the many members of the public, are concerned about the integrity of EPA's decision to step down from the investigation. Disclosure of the requested information would either ameliorate or justify this public concern, outcomes that either way are significant not just to residents of Pavillion but also to the public at large.

5. The extent to which disclosure will serve the requester's commercial interest, if any: Food & Water Watch has no commercial interest in obtaining the agency records that it is requesting.
6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest: There is no commercial interest, and the public interest is significant.

If this FOIA request is denied in whole or in part, a detailed justification for withholding the records is expected. I also ask that any non-exempt segregable portions of the requested documents be disclosed.

Thank you for your prompt attention to this matter. Please contact me at 202-683-4951 or fbuzzi@fwwatch.org with any questions regarding this request for information.

Sincerely,

Francesca Buzzi
Researcher
Food & Water Watch